

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0089

Sales Tax

For the Calendar Years 1999, 2000, & 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a Department prepaid sales tax audit conducted for the years the calendar years 1999, 2000, & 2001.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be abated as the error was unintentional, and, the taxpayer had no control over the remittance of prepaid sales tax as the fuel in question was sold to retail locations other than the taxpayer's locations.

The Department disagrees. As the taxpayer is the distributor of the fuel to other retail locations other than the taxpayer's own locations, the taxpayer has control of the collection and the remittance of the prepaid sales tax on the sale of the bulk fuel.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of the tax due date. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.